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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

DAVID BURKE,

Defendant and Appellant.

D070050

(Super. Ct. No. SCD265538)

APPEAL from a judgment of the Superior Court of San Diego County, Daniel F. Link, Judge. Affirmed.

Amy Parekh, under appointment by the Court of Appeal for Defendant and Appellant.

Kamala D. Harris, Attorney General, for Plaintiff and Respondent.

Appellant David Burke was charged with assault with a deadly weapon (Pen. Code,¹ § 245, subd. (a), count 1) and willful cruelty to an elder/dependent adult causing great bodily injury (§ 368, subd. (b)(2).) The complaint further alleged, in connection

¹ All further statutory references are to the Penal Code unless otherwise noted.

with count 2, Burke personally inflicted great bodily injury upon a person 70 years of age or older (within the meaning of section 12022.7, subdivision (c)), and personally inflicted great bodily injury within the meaning of section 1192.7, subdivision (c)(8).

Burke entered into a plea bargain, signed by Burke, pursuant to which he pleaded guilty to count 2 and admitted the section 1192.7, subdivision (c)(8), allegation. Under the plea agreement, Burke expressly acknowledged his understanding that guilty plea and admission of the special allegation could carry a term of up to four years, but the plea agreement contained a stipulation that the district attorney (in addition to dismissing the remaining charges and allegations) would not seek a term in excess of three years. The trial court ultimately sentenced Burke to three years along with certain fines and fees.

Burke timely filed a notice of appeal. We affirm the judgment.

FACTS

Burke admitted that he "did commit an assault on an elderly inflicting unjustifiable pain and suffering, and it resulted in great bodily injury." (C.T. 6; R.T. 9)

DISCUSSION

Appointed appellate counsel has filed a brief summarizing the facts and proceedings below. Counsel presents no argument for reversal, but asks this court to review the record for error as mandated by *People v. Wende* (1979) 25 Cal.3d 436 and *Anders v. California* (1967) 386 U.S. 738. Counsel identifies the following issues that "might arguably support the appeal" (*Anders v. California, supra*, 386 U.S. at p. 744): (1) did the trial court abuse its discretion when sentencing appellant to the three-year mid-term instead of probation or the lower term of two years; (2) was Burke properly

advised of his constitutional rights, consequences of pleading guilty, and did he voluntarily waive them. However, counsel presents no argument for reversal on these issues.

We granted Burke permission to file a supplemental brief on his own behalf, and have granted his requests for additional extensions of time to respond, but he has provided no filings raising any reasonably arguable appellate issue that is cognizable in this appeal. (*People v. Williams* (1988) 44 Cal.3d 883, 916-917, fn. 12.) A review of the record pursuant to *People v. Wende, supra*, 25 Cal.3d 436 and *Anders v. California, supra*, 386 U.S. 738, including the issues referred to by appellate counsel, has disclosed no reasonably arguable appellate issues. Burke has been competently represented by counsel on this appeal.

DISPOSITION

The judgment is affirmed.

O'ROURKE, J.

WE CONCUR:

BENKE, Acting P. J.

NARES, J.